

Commissioner for Patents

REMARKS

Claims 3 and 5-8 remain in the application

Claims 3 and 5-8 are herein amended.

On page 2 of the Office action, the Examiner rejects claim 3 under 35 U.S.C. 112, first paragraph, for the addition of new matter. While not conceding the appropriateness of the rejection, but merely to advance prosecution, claim 3 is amended to remove the expression "*pointy*" therefrom.

On page 3 of the Office action, the Examiner rejects the claims under 35 U.S.C. 103(a) over the combination of Ellis and Brosseau.

Ellis teaches an apparatus that is used to determine the diameter of an intramedullary canal. Ellis is not concerned in any way by the digitization of an axis of the intramedullary canal.

Brosseau is generally used by the Examiner to support the obviousness rejection related to computer-assisted surgery. However, Brosseau also fails to teach the digitization of an intramedullary canal.

Accordingly, the amendments made to claim 3 are not taught by either one of Brosseau and Ellis. Accordingly, due to the presence of several structural limitations in claim 3 absent from the prior art, claim 3 as currently amended is deemed to be in order for allowance.

In view of the above amendments and remarks, this application is considered to be in condition for allowance, and early notice to that effect is earnestly solicited.

Respectfully submitted,
Herbert Andre JANSEN et al.
By:

February 17, 2011
(Date)

/Pierre T. A.-NGUYEN/
Pierre T. A.-NGUYEN (Reg. No. 55,043)
Agent of Record
OGILVY RENAULT LLP
1 Place Ville Marie, Suite 2500
Montreal, Quebec, Canada H3B 1R1
Tel.: (514)847-4243